

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

U.S. ETHERNET INNOVATIONS, LLC,

No. C 10-3724 CW

Plaintiff,

ORDER ADDRESSING  
USEI'S MOTION FOR  
DISCOVERY

v.

SANCTIONS AND TO  
SET A SHOW CAUSE  
HEARING FOR  
FURTHER SANCTIONS  
DUE TO PARTY  
MISCONDUCT (Docket  
No. 749)

ACER, INC.; ACER AMERICA  
CORPORATION; APPLE, INC.; ASUS  
COMPUTER INTERNATIONAL; ASUSTEK  
COMPUTER, INC.; DELL, INC.;  
FUJITSU, LTD.; FUJITSU AMERICA,  
INC.; GATEWAY, INC.; HEWLETT  
PACKARD CO.; SONY CORPORATION;  
SONY CORPORATION OF AMERICA; SONY  
ELECTRONICS INC.; TOSHIBA  
CORPORATION; TOSHIBA AMERICA,  
INC.; and TOSHIBA AMERICA  
INFORMATION SYSTEMS, INC.,

Defendants,

INTEL CORPORATION; NVIDIA  
CORPORATION; MARVELL  
SEMICONDUCTOR, INC.; Atheros  
COMMUNICATIONS, INC.; and  
BROADCOM CORPORATION,

Intervenors.

Plaintiff U.S. Ethernet Innovations LLC (USEI) moves for certain "evidentiary sanctions" against Intervenor Intel Corporation, Defendant Hewlett-Packard Company (HP) and their counsel and for an order directing them to show cause why additional sanctions should not be ordered. USEI contends that these parties improperly entered into a consulting agreement with Richard Baker, who is a former employee of 3Com, which was the prior owner of the patents-in-suit. Mr. Baker is also a former employee of HP and is a potential fact witness in this litigation.

1 USEI requests that the Court find that all communications between  
2 Mr. Baker and Intel, HP or their counsel are not privileged and  
3 must be disclosed to USEI; require the production of documents  
4 related to meetings between them and all documents that they have  
5 exchanged; permit USEI to depose Mr. Baker about these  
6 communications; and prohibit Intel and HP from using evidence from  
7 Mr. Baker to support their claims or defenses. USEI also asks  
8 that the Court set a show cause hearing to consider whether to  
9 disqualify HP and Intel's counsel and to strike their claims and  
10 defenses. HP and Intel oppose the motion in its entirety.

11 Having considered the papers filed by the parties, the Court  
12 DENIES the motion in part and REFERS it in part. USEI has not  
13 shown that HP and Intel's counsel should be disqualified, that  
14 their claims and defenses should be stricken or that any other  
15 such sanctions are warranted. However, HP and Intel may not  
16 prevent USEI from contacting Mr. Baker directly and may not  
17 require that USEI contact Mr. Baker only through HP or its  
18 counsel.<sup>1</sup> They also may not prevent Mr. Baker from speaking with  
19 USEI, if he wishes to do so.

20 The Court REFERS the remainder of the motion, including the  
21 issues of USEI's specific discovery requests and HP and Intel's  
22 claims of privilege, to the discovery Magistrate Judge for  
23 resolution. Within seven days of the date of this Order, the  
24 parties shall meet and confer regarding the remaining issues  
25 raised in USEI's motion, and shall file a single joint letter  
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27 <sup>1</sup> If Mr. Baker is represented by counsel himself, USEI may  
28 contact Mr. Baker only through his attorney.

1 brief addressing any issues on which they are unable to reach a  
2 resolution, following the procedures set forth in the Magistrate  
3 Judge's standing order.

4 IT IS SO ORDERED.

5  
6 Dated: 8/16/2013

  
CLAUDIA WILKEN  
United States District Judge

United States District Court  
For the Northern District of California